

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



(b)(6)

**U.S. Citizenship
and Immigration
Services**

DATE: **AUG 21 2013**

OFFICE: NEBRASKA SERVICE CENTER FILE: [REDACTED]

IN RE: Petitioner:
Beneficiary: [REDACTED]

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The employment-based petition was dismissed by the Director, Nebraska Service Center (director). The Administrative Appeals Office (AAO) dismissed the petitioner's appeal. The matter is now before the AAO on a motion to reopen the decision. The AAO will grant the motion but affirm the AAO's May 22, 2013, dismissal of the appeal. The petition will remain denied.

The petitioner is an inks and dyes supplier. It seeks to employ the beneficiary permanently in the United States as a textile chemist pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2). As required by statute, an ETA Form 9089, Application for Permanent Employment Certification approved by the Department of Labor (DOL), accompanied the petition. The director determined that the beneficiary did not satisfy the minimum level of education stated on the labor certification or as required by the advanced degree professional classification. The director denied the petition accordingly.¹

On May 22, 2013, the AAO dismissed the appeal, concluding that the beneficiary does not possess a U.S. advanced degree or a foreign equivalent degree issued by a college or university.

On June 21, 2013, the petitioner filed a motion to reopen. A motion to reopen must state the new facts to be submitted in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). Included with the motion, counsel submits additional evidence related to the nature of the beneficiary's credentials.

The regulation at 8 C.F.R. § 204.5(k)(2) defines the term "advanced degree:"

[A]ny United States academic or professional degree or a foreign equivalent degree above that of baccalaureate. A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree. If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree

The regulation at 8 C.F.R. § 204.5(k)(3)(i) states that a petition for an advanced degree professional must be accompanied by:

- (A) An official academic record showing that the alien has an United States advanced degree or a foreign equivalent degree; or
- (B) An official academic record showing that the alien has a United States baccalaureate degree or a foreign equivalent degree, and evidence in the form of letters from current or former employer(s) showing that the alien has at least five years of progressive post-baccalaureate experience in the specialty.

¹ The AAO conducts appellate review on a *de novo* basis. The AAO's *de novo* authority is well recognized by the federal courts. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The procedural history of this case is documented in the record and is incorporated herein. Further references to the procedural history will only be made as necessary.

The record indicates that the beneficiary obtained a Technician's Certificate in the Dyeing of Textiles following attendance at [REDACTED] and passing the examination (May-June 1970). He also received a Technician's Advanced Certificate in the Dyeing of Textiles following attendance at [REDACTED] (May-June 1971). In 1976, the beneficiary was certified as an Associate in The Society of Dyers and Colourists (SDC), entitling him to describe himself as a Chartered Colour Technologist. In 2005, he became a Fellow in SDC.²

On motion, the petitioner renews the assertion that the beneficiary's credential as an associate in SDC should be regarded as a foreign equivalent bachelor's degree sufficient to qualify him as a second preference advanced degree professional under section 203(b)(2) of the Act. According to the materials submitted on motion, the SDC is a professional organization. It has two classes of members: Member Non-Corporate and Member Corporate. An "Associateship (which is of honours-degree standard) is awarded to corporate members who have passed either the prescribed Society examinations or who possess a good honours degree (or equivalent qualification), and who have demonstrated to the Society their competence and the validity of their experience in the knowledge and use of color" (page 1 of the SDC membership document submitted on motion). The petitioner contends that the passage of "diploma" SDC examinations signifying the individual's competence supports the beneficiary's eligibility as the recipient of a foreign degree issued by a college or university.

The AAO cannot concur. As noted in its prior May 22, 2013 decision, when the beneficiary relies on a bachelor's degree (and five years of progressive experience) for qualification as an advanced degree professional, the degree must be a single U.S. bachelor's (or foreign equivalent) degree. The Joint Explanatory Statement of the Committee of Conference, published as part of the House of Representatives Conference Report on the Act, provides that "[in] considering equivalency in category 2 advanced degrees, it is anticipated that the alien must have a bachelor's degree with at least five years progressive experience in the professions." H.R. Conf. Rep. No. 955, 101st Cong., 2nd Sess. 1990, 1990 U.S.C.C.A.N. 6784, 1990 WL 201613 at 6786 (Oct. 26, 1990).

In *Snapnames.com, Inc. v. Michael Chertoff*, 2006 WL 3491005 (D. Or. Nov. 30, 2006), the court held that, in professional and advanced degree professional cases, where the beneficiary is statutorily required to hold at least a baccalaureate degree, USCIS properly concluded that a single foreign degree or its equivalent is required. Where the analysis of the beneficiary's credentials relies on work experience alone or a combination of multiple lesser degrees, the result is the "equivalent" of a bachelor's degree rather than a "foreign equivalent degree."³ In order to have experience and education equating to an advanced degree under section 203(b)(2) of the Act, the beneficiary's five

² According to the online printout submitted by the petitioner on motion, SDC Fellowship candidates must have an approved university honours degree, or a qualification or achievement that demonstrates a level of knowledge and ability at least equivalent to attaining an approved honours degree in a colour-related discipline.

³ Compare 8 C.F.R. § 214.2(h)(4)(iii)(D)(5) (defining for purposes of H-1B nonimmigrant visa classification, the "equivalence to completion of a college degree" as including, in certain cases, a specific combination of education and experience). The regulations pertaining to the immigrant classification sought in this matter do not contain similar language.

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years of progressive experience must be predicated on a single degree that is a "foreign equivalent degree" to a United States baccalaureate degree. *See* 8 C.F.R. § 204.5(k)(2).

Moreover, the beneficiary's degree must also be from a college or university. The regulation at 8 C.F.R. § 204.5(k)(3)(i)(B) requires the submission of an "official academic record showing that the beneficiary has a United States baccalaureate degree or a foreign equivalent degree." For classification as a member of the professions, the regulation at 8 C.F.R. § 204.5(l)(3)(ii)(C) requires the submission of "an official college or university record showing the date the baccalaureate degree was awarded and the area of concentration of study." The AAO cannot conclude that the evidence required to demonstrate that a beneficiary is an advanced degree professional is any less than the evidence required to show that the beneficiary is a professional. To do so would undermine the congressionally mandated classification scheme by allowing a lesser evidentiary standard for the more restrictive visa classification. *See Silverman v. Eastrich Multiple Investor Fund, L.P.*, 51 F. 3d 28, 31 (3rd Cir. 1995) *per APWU v. Potter*, 343 F.3d 619, 626 (2nd Cir. Sep 15, 2003) (the basic tenet of statutory construction, to give effect to all provisions, is equally applicable to regulatory construction). Moreover, the commentary accompanying the proposed advanced degree professional regulation specifically states that a "baccalaureate means a bachelor's degree received *from a college or university*, or an equivalent degree." (Emphasis added.) 56 Fed. Reg. 30703, 30706 (July 5, 1991).⁴

Thus, the plain meaning of the Act and the regulations is that the beneficiary of an advanced degree professional petition must possess, at a minimum, a degree from a college or university that is a U.S. baccalaureate degree or a foreign equivalent degree.

As noted above, for classification as an advanced degree professional, the beneficiary must possess a foreign degree from a college or university that is an equivalent degree to a U.S. bachelor's degree. Based on a review of the record, the AAO cannot conclude that the SDC is a college or university that can confer a degree.⁵ Therefore, although the beneficiary may possess the "equivalent" of a bachelor's degree, he does not possess a "foreign equivalent degree" from a college or university within the meaning of 8 C.F.R. § 204.5(k)(2).

Based on the foregoing, the AAO reaffirms its previous dismissal of the appeal on May 22, 2013.

The burden of proof in these proceedings rests solely with the petitioner. The petitioner has not met that burden. Section 291 of the Act, 8 U.S.C. § 1361.

⁴ Compare 8 C.F.R. § 204.5(k)(3)(ii)(A) (relating to aliens of exceptional ability requiring the submission of "an official academic record showing that the alien has a degree, diploma, certificate or similar award from a college, university, school or other institution of learning relating to the area of exceptional ability").

⁵ See *Snappnames.com, Inc. v. Michael Chertoff*, 2006 WL 3491005 *11 (D. Ore. Nov. 30, 2006) (finding USCIS was justified in concluding that Institute of Chartered Accountants of India membership was not a college or university "degree" for purposes of classification as a member of the professions holding an advanced degree).

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NON-PRECEDENT DECISION

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ORDER: The motion to reopen is granted. The prior decision AAO dated May 22, 2013 is affirmed. The petition remains denied.